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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 267

GEO. T. COTTINGHAM AND WILLIAM C. MEGINNES, DOING BUSINESS AS CITY TRANSFER COMPANY, ET AL., APPELLANTS,

vs.

FRANK G. SNOOK, AS CHIEF OF DIVISION OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, AND RAY L. RILEY, AS STATE CONTROLLER OF THE STATE OF CALIFORNIA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED JULY 29, 1929

(34,398)

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INDEX

	Original	Print
Record from the district court of the United States, Northern California	1	1
Bill of complaint	1	1
Motion for interlocutory injunction	17	13
Order to show cause	19	14
Notice of hearing (omitted in printing)	21	
Motion to dismiss	23	15
Decree	26	17
Petition for appeal and order allowing same	28	17
Assignments of error	29	18
Bond on appeal (omitted in printing)	31	
Precipe for transcript of record (" " ")	34	
Clerk's certificate (" " ")	36	
Citation and service (" " ")	37	
Statement of points to be relied upon and designation of parts of record to be printed	39	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1929

[fols. a-1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

In Equity. No. 2389S

GEO. T. COTTINGHAM and WILLIAM C. MEGINNES, Doing Business as City Transfer Company; San Jose Transfer & Storage Company, a Corporation, and Union Ice Company, a Corporation, Plaintiffs,

vs.

FRANK G. SNOOK, as Chief of the Division of Motor Vehicles, State of California, and Ray L. Riley, as State Controller of the State of California, Defendants

BILL OF COMPLAINT—Filed June 15, 1929

To the Honorable Judges of the District Court of the United States for the Northern District of California, Southern Division, sitting in equity:

The plaintiffs bring this bill of complaint, on behalf of themselves and on behalf of all persons, firms, associations and corporations simliarly interested or situated and entitled to receive the benefits herein, against Frank G. Snook, as Chief of the Division of Motor Vehicles, State of California, and Ray L. Riley, as State Controller of the State of California, defendants, and thereupon plaintiffs complain of the said defendants and show unto your Honors as follows:

I

The plaintiffs, Geo. T. Cottingham and William C. Meginnes, doing business as City Transfer Company, have been for some years and are now carrying on their business at Watsonville, California; their business is to trans- [fol. 2] port property in their motor vehicles using the streets of Watsonville, California, and also the highways outside of the limits of said city; their business amounting to more than $20,000 yearly would be absolutely de-

stroyed if they are prevented from using said streets and said highways by their motor vehicles; they have paid in advance this year $322.00 under subdivision (c) of Section 77 of the "Motor Vehicle Act" to the defendant Snook and will pay said charge on at least one additional truck after the 1st of July, 1929 so as to carry on their business or their business will be irreparably damaged. The plaintiff, San Jose Transfer Company, is and has been a Corporation duly organized and existing under and by virtue of the laws of the State of California with its principal office in San Jose; its business is to transport property in its motor vehicles using the streets of San Jose, California; and also the highways outside of said City; its business, amounting to more than $50,000 yearly, would be absolutely destroyed if it is prevented from using said streets and said highways by its motor vehicles; it has paid in advance this year $505.00 under said subdivision (c), as aforesaid, to said defendant Snook and will pay said charges on at least one additional truck after the 1st of July, 1929, so as to carry on its business or its business will be irreparably damaged. The plaintiff, Union Ice Company, is and has been for years a corporation duly organized and existing under and by virtue of the laws of the State of California with its principal office in San Francisco, and with branches in many of the other cities of said State; its business compels it to carry its products by motor vehicles using the streets of many cities and also the highways outside of said cities in said State; its busi-
[fol. 3] ness amounting to more than $1,000,000.00 yearly would be absolutely destroyed if it is prevented from using said streets and said highways by its motor vehicles; it has paid in advance this year more than $15,000.00 (at this time it is not able to show the exact amount) under the said subdivision (c) to the defendant Snook, and moreover it must pay said charges on many additional trucks after July 1st, 1929 or its business will be irreparably damaged, as such additional trucks are needed to take care of the summer trade.

II

That the said defendant Frank G. Snook, as Chief of the Division of Motor Vehicles, State of California, has been for some years last past and is now duly appointed,

qualified and acting chief of the Division of Motor Vehicles, residing at Sacramento; the said defendant Ray L. Riley has been for many years last past and is now the duly elected, qualified and acting State Controller of the State of California, residing at Sacramento.

III

The State of California enacted the "California Vehicle Act," being Chapter 226, Statutes of 1923, as amended by Chapter 240, Statutes of 1925, and by Chapters 752, 844 and 864, Statutes of 1927. Said act, as amended, is in full force and effect, and is herein referred to and made a part hereof, the same as if set out in full.

Under the provisions of said Act, as amended, the defendant, as Chief of Division of Motor Vehicles has the sole jurisdiction, and it is his duty to enforce all the provisions of said Act (Sections 29, 30, 37).

[fol. 4] That every owner of a motor vehicle, trailer or semi-trailer, which shall be operated upon the highways is compelled to register the vehicle (Sec. 36). Every vehicle registration shall expire at midnight on the Thirty-first day of December each year, and shall be renewed annually (Sec. 44).

The said defendant Snook cannot grant an application for registration or issue registration or number plates, unless the correct fee be paid (Sec. 49). It shall be unlawful and constitute a misdemeanor for any person to operate any motor vehicle, trailer or semi-trailer upon at public highway which shall not be registered and registration fees have not been paid (Sec. 51).

Registration Fees

Sec. 77. (a) A registration fee of Three Dollars shall be paid to the Division for the registration of every motor vehicle, trailer or semi-trailer except for those which are exempted in this Act, and such fee shall be paid at the time application is made for registration.

Fees for Electric Vehicles

(b) In addition to the registration fee specified in subdivision (a) of this Section, there shall be paid ten dollars, and for the registration of every electric motor ve-

hicle designed, used or maintained primarily for the transportation of passengers for hire, or for the transportation of property, there shall be paid fees according to the following schedule:

—, less than six thousand pounds $50
—, less than ten thousand pounds $70
—, ten thousand pounds or over $90

Fees for Motor Vehicles

(c) The following registration fees in addition to the registration fee specified in sub-division (a) of this section shall be paid for the registration of vehicles, including trailers and semi-trailers, designed, used or maintained primarily for the transportation of passengers for hire or for the transportation of property, according to the following table:

[fol. 5] When such vehicles are equipped wholly with pneumatic tires - - - when unladen, three thousand pounds or more and less than six thousand pounds $15.00
- - - when unladen, six thousand pounds or more, but less than ten thousand pounds and limited - - - to a total weight, including vehicle and load, not *to* exceeding twenty-two thousand pounds 40.00
- - - when unladen, ten thousand pounds or more, - - - a total weight, including vehicle and load, not exceeding twenty-two thousand pounds 50.00
- - - when unladen, six thousand pounds or more and - - - a total weight, including vehicle and load, in excess of twenty-two thousand pounds.. 70.00

Vehicles Not Equipped with Pneumatic Tires

When such vehicles are not equipped wholly with pneumatice tires there shall be paid in addition to the fees specified in sub-division (a) - - - twice the fees set forth in the foregoing table."

Upon registration issued after the beginning of the registration year, the fees required under sub-divisions

(b) and (c) shall be reduced by one-fourth for each three months which shall have elapsed since the beginning of said registration year (Sec. 77).

Every person operating unlawfully is punished by a fine of not to exceed $500, imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment—moreover the registration fee and penalty constitute a lien upon the vehicle upon which the same are due and it is the duty of said defendant to collect such fee and penalty by seizures of such vehicle and by the sale of such vehicle (Sec. 81).

Legislative bodies of counties and cities are given the power to license for revenue and regulate the operation of vehicles transporting persons for hire and transporting property (Sec. 145).

The defendant Snook shall deposit in the State Treas- [fol. 6] ury to the credit of the motor vehicle fund all moneys collected during the preceding business day (Sec. 157). A motor vehicle fund was created and the State Treasurer must deposit all moneys received by him from the defendant in said motor vehicle fund. The balance of said fund after the expenditure of so much as may be permitted for the support of the Division of Motor Vehicles, but not more than 25%—collected, shall be divided, one half shall be paid to the counties in proportion to the number of vehicles registered in said counties as determined by the places of residences of the owners. All amounts paid to the counties shall be deposited in road funds and shall be expended exclusively in the construction and maintenance of public roads, bridges and culverts in said counties, and the other half is expended solely for the maintenance, repair, widening, resurfacing and reconstruction of State and State park roads. The defendant, Riley, as State Controller, is ordered to draw warrants upon the motor vehicle fund in the months of February and August (Sec. 159).

IV

The plaintiffs allege that prior to the Amendments of 1927, which went into force and effect after December 31, 1928, said sub-division (c) was as follows:

"For each such vehicle weighing when unladen, less than 3,000 pounds..... $10;"

Also by the Amendments the charges were increased about 25% in sub-division (b) and 250% in sub-division (c). Since December 31, 1928, there are many thousands of motor vehicles transporting persons for hire or transporting property which only weigh, when unladen, less than 3,000 pounds, but carry in some instances more than 3,000 pounds, and the owners thereof pay no charges under the [fol. 7] present subdivision (c), but are indirect competition with the plaintiffs and all persons, firms, associations and corporations who have and will in the future pay said charges before they can use their motor vehicles for the transporting of persons for hire or transporting property, or the defendant Snook will enforce said law. Said competition has already caused the plaintiffs and all others compelled to pay such charges under said subdivision (c) at least $200,000.00 in damage to and loss of business, and every day said plaintiffs and said others are being so damaged as aforesaid, and they cannot recover any of said losses from said owners, who have been granted under the provisions of said subdivision (c) said privileges and immunities.

The plaintiffs on behalf of themselves, as well as those persons, firms, associations and corporations who have to pay said charges, allege that said subdivision (c) of Section 77, as amended, of the "California Vehicle Act," and the acts of the defendant Snook, as Chief of the Division of Motor Vehicles, in enforcing said illegal subdivision (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the 14th Amendment of the Federal Constitution, as well as the provisions of the Constitution of the State of California, especially Sections 11 and 21 of Article 1, prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens, or which shall deprive any person of life, liberty or property without due process of law, or denies to any person the equal protection of the laws, or granting privileges or immunities to some of the same class of persons while denying the same privileges or immunities to others of the same class, and the protection of all of which the said plaintiffs and all said others pray.

[fol. 8]

V

The plaintiffs, as well as said others, are tax payers in said respective cities of the State, and are compelled to pay taxes and assessments in order to construct and repair the streets in said respective cities, but also as owners and operators of motor vehicles transporting persons for hire or transporting property are compelled to pay charges, as license fees, in said respective cities before they can use said streets. Said license fees vary from $5.00 to $250.00 per year according to the weight and capacity of the motor vehicle, depending upon the city. Said cities were empowered by the Constitution of the State of California to issue licenses in order to obtain money for the cost of regulating said motor vehicles and also for revenue. The plaintiffs and said others will be compelled to pay in the future said license fees on their additional trucks, as aforesaid, or their business will be irreparably damaged, and they have paid said fees on their motor vehicles which have been operated prior to this time.

The plaintiffs and said others have this year paid several millions of dollars to said respective cities for said license fees, and about 75% of the money so collected is used for reconstruction or repair on the streets of the respective cities and the other 25% is used for regulation.

The plaintiffs allege that 75% of the operation of their motor vehicles is confined exclusively to the streets of said respective cities and the other 25% is on the highways outside of the limits of said cities.

Under the provisions of said "California Vehicle Act" all of the money collected by the defendant Snook from said subdivision (c) is used exclusively in the reconstruction [fol. 9] maintenance or repair on the State Highways or in the construction or maintenance of county roads, and no portion of said money is used to construct, reconstruct, repair or maintain the streets of said respective cities.

The plaintffs allege said charges under said subdivision (c) are not designed, as the measure of the cost or value of the use of highways outside of the limits of said cities, as the motor vehicles operating continually on said highways for the same flat charges.

The plaintiffs and all others allege that said subdivision (c) and the acts of the defendant Snook in enforcing said illegal subdivision (c) are unconstitutional and void, being contrary to and in violation of the 14th Amendment of the Federal Constitution, as well as the Constitution of the State of California, prohibiting the making or enforcement of any law which allowed double taxation or granting privileges and immunities to some in the same class, or deprice any person of life, liberty or property without due process of law, or denies to any person the equal protection of the laws, the protection of all of which, the said plaintiffs and all said others pray.

VI

The plaintiffs allege that since December 31, 1928, the said Frank G. Snook, defendant, acting solely and by virtue of his said color of office, to-wit, Chief of the Division of Motor Vehicles, has enforced the said provisions of subdivision (c), and has illegally demanded and collected the said illegal and unconstitutional exactions from the said plaintiffs and all other persons, firms, associations, and corporations similarly interested or situated; the plaintiffs and all said others were compelled to and paid said exact-[fol. 10] ions in order to use their motor vehicles, as aforesaid, or escape the heavy penalties, imposed by fines or imprisonments, or both, as well as the seizure of their motor vehicles. The plaintiffs requested the *plaintiff* Snook to inform them of what amount of money had been so collected from said subdivision (c) and he has failed to furnish such information, and the plaintiffs have been informed and believe the fact to be and upon such information and belief allege that said defendant Snook has collected more than $2,500,000 from said exactions of said subdivision (c), including the payment by said plaintiffs, as aforesaid, and said defendant Snook, unless restrained, will compel the plaintiffs and all said others after this day to pay more than $100,000 additional under the provisions of said subdivision (c). That said defendant Snook has already collected about $8,000,000 since December 31st, 1928 from the provisions of Section 77, as amended, as aforesaid, and

from the fees collected from manufacturers and owners and chauffeurs, and said $8,000,000 was collected about in this proportion, $5,200,000 from subdivision (a), $20,000 from subdivision (b), $2,500,000 from subdivision (c) and the balance $280,000 from manufacturers and owners and chauffeurs. That during this year the defendant Snook will collect more than $2,000,000 additional. That by the provisions of said "California Vehicle Act" only 25% of the amount so collected, as aforesaid, can be used for the regulation and enforcement of said Act, and the amount collected from said subdivisions (a), as aforesaid, will be more than twice the said cost of regulation and enforcement, and no portion of the money collected from subdivision (c), as aforesaid, will be used for said regulations and enforcement, but all said moneys will be used for reconstruction, [fol. 11] construction, maintenance and repair on the highways without the limit of the cities. The plaintiffs allege further that such exactions found in said subdivision (c), as aforesaid, are compensation, for the use of said highways outside of the limits of cities, to-wit, tolls and are not based upon the police power, but for revenue. The plaintiffs allege further that said flat charges, as aforesaid, to be paid in advance before the use of the highways and the streets of said cities, are unconstitutional, as such charges cannot be divided in advance, depending upon the future operations on the said highways in comparison with the said operation on the streets in said cities.

The said subdivision (c), as aforesaid, and the acts of said defendant Snook in enforcing said illegal subdivision (c) are unconstitutional and void, being contrary to and in violation of the 14th Amendment of the Federal Constitution and the Constitution of the State of California, prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens, or deprive any person of life, liberty, or property without due process of law, denies to any person the equal protection of the laws, the protection of all of which the said plaintiffs and all of said others pray.

VII

That the Congress of the United States on July 11th, 1916, enacted an Act entitled:

"An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." Chap. 241, 39 Stat. at L. 355.

The State of California enacted a law, assenting to and agreeing to abide with the provisions of said Rural Post Roads Act, entitled:

[fol. 12] "An Act expressing assent of the State of California to the provisions of the Act of Congress approved July 11, 1916, entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes. Chap. 29, Laws of 1917.

Thereafter on November 9, 1921 Congress amended and supplemented said Act by the "Federal Highway Act," Chap. 119, 42 Stat. at L. 212.

That the Federal Government has since the year 1917 paid over to said State many millions of dollars under said Federal Acts for the construction or reconstruction of highways and in the future said Federal Government will pay additional millions to said State. That said Federal aid has been expended on all State highways and on all county roads for construction or reconstruction. All State highways and all county roads are rural post roads and also come within the provisions of said Federal Acts; one of said provisions provided:

"That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds."

The plaintiffs allege that the exactions under subdivision (c), aforesaid, are "tolls," being charges for the use of said highways outside of the limits of cities, and no portion of such money so collected thereunder is used for the cost of regulation or enforcement of said "California Vehicle Act," and moreover no portion thereof is used for the construction, reconstruction, maintenance or repair of any street in said cities, as the streets of said cities are constructed, reconstructed, maintained and repaired by taxation, assessments or license fees to be paid by these plaintiffs and all said others, as aforesaid, for the use of said streets by their motor vehicles.

The plaintiffs allege that said illegal subdivision (c), as [fol. 13] aforesaid, and the acts of the defendant Snook in enforcing said illegal subdivision (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the said Federal Aid Legislation, so adopted by the State of California, the protection of all of which the plaintiffs and all of said others pray.

VIII

The plaintiffs allege that in the provisions of Section 77, as amended, of the "California Vehicle Act," the said defendant Snook must pay the money so collected to the State Treasurer, and no portion of said moneys so deposited can be withdrawn, unless the defendant Riley should issue warrants, and said defendant Riley can only issue warrants in February and August, and the plaintiffs have been informed and believe and upon such information and belief charge the fact that the whole amount so collected by the defendant Snook from the proceeds of said subdivision (c), as aforesaid, is still in the "Motor Vehicle Fund" and unless this Honorable Court shall issue the interlocutory injunction prayed for herein restraining said defendant Riley, as aforesaid, said defendant Riley will draw warrants in August, 1929, on said "motor vehicle fund" and thereupon said money so collected, as aforesaid, from said subdivision (c), as aforesaid, will be distributed, and in the event said subdivision (c), as aforesaid, and the acts of said defendant Snook in collecting said money will be declared unconstitutional and void by this Honorable Court, then such money will be lost to these plainitffs and all of said others, and they will be irreparably damaged.

IX

The premises considered these plaintiffs and all persons, [fol. 14] firms, associations and corporations similarly interested or situated have no plain adequate and complete remedy at law.

X

That the matters involved in this controversy exceed in value the sum of Three Thousand (3,000) Dollars, exclusive of interest and costs.

XI

Forasmuch as these plaintiffs and all persons, firms, associations and corporations similarly interested or situated can have no adequate relief except in Court and to the end that the defendants may, if they can, show why the plaintiffs and all persons, firms, associations and corporations similarly interested should have the relief herein prayed, and make full disclosure and discovery of all the matters aforesaid according to the best and utmost of their knowledge and belief, full, true, direct and perfect answer make to the matters in this Bill of Complaint hereinabove stated, but not under oath being especially waived, the plaintiffs on behalf of themselves, as well as on behalf of all persons, firms, associations and corporations similarly interested or situated, who are entitled to the benefits herein, pray that and interlocutory injunction be granted restraining and enjoining the defendant, Frank G. Snook, as Chief of Motor Vehicle Division, as aforesaid, from in any way or manner enforcing or threatening to enforce the said provisions of said subdivision (c) of said section 77, as amended, of the "California Vehicle Act" and further restraining and enjoining said defendant, Ray L. Riley, as State Controller of the State of California, from issuing any warrant or warrants against said "Motor Vehicle Fund" which would deplete that fund to such an extent that less than $2,500,000.00 remained therein which [fol. 15] latter sum shall be subject to any order or orders of this Honorable Court in the premises, and the plaintiffs pray that this Court proceed to call in two other judges, one of whom to be a circuit judge, for the purpose of hearing and determining the application for said interlocutoy injunction as prayed for herein under the provisions of Section 266, as amended, of the Judicial Coade, and the plaintiffs pray upon the final hearing of this cause before said Court consisting of three judges for a decree declaring the said sub-division (c) of Section 77, as amended, of the "California Vehicle Act," being Chapter 266, Statutes of 1923, as amended by Chapter 844, Statutes of 1927 is unconstitutional and the said defendant, Frank G. Snook, as Chief of Division of Motor Vehicles, be forever enjoined and permanently restrained from en-

forcing the illegal, void and unconstitutional subdivision (c) of said Sec. 77, as amended, as aforesaid, and the plaintiffs further pray that a decree be entered commanding and directing the said defendant, Snook, to immediately account for all moneys which he has collected from said illegal subdivision (c) of Section 77, as amended, as aforesaid, and after said amount is found, then the defendant, Riley, is commanded and directed to immediately issue a warrant for the said amount so found, including interest, on said motor vehicle fund and said money shall be paid over *the* the registry of this Court, and in the event said amount so found is more than in said Motor Vehicle Fund, then a judgment for the difference is to be entered against said defendant, Snook, with interest, and the plaintiffs pray for such allowances, distributions and payments as the Court may hereafter determine, award and decree, and for all other, proper and further relief as may be just [fol. 16] and equitable in the premises, and for the costs and disbursements herein expended.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

Duly sworn to by M. H. Robbins. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR AN INTERLOCUTORY INJUNCTION—Filed June 15, 1929

Come now the Plaintiffs in the above entitled cause and move this Court for an order to show cause why the Plaintiffs are not entitled to the issuance of an Interlocutory Injunction until the final determination of said cause; and the Plaintiffs request this Court will call in two other judges, one of whom shall be a Circuit Judge, under the provisions of Section 266, as amended, of the Judicial Code, so as to

hear and determine said motion for an interlocutory injunction, as the constitutionality of the provisions of a Statute of the State of California, and the acts of the said Defendant, Frank G. Snook, as Chief of the Division of Motor Vehicles, and the said defendant Ray L. Riley, as State Controller of the State of California, in enforcing said provisions of said State Statute are involved in this action, and further, that said Court, consisting of three Judges, shall finally hear and determine such action.

Said motion is based upon the records and files in the [fol. 18] cause.

W. R. Crawford, J. F. Vizzard, Solicitors of Plaintiffs.

[File endorsement omitted.]

[fol. 19] In United States District Court

[Title omitted]

Order to Show Cause—Filed June 15, 1929

It appearing to the Court from the motion for an interlocutory injunction and the affidavit attached thereto, and also from the allegations and prayer contained in the bill of complaint filed herein that the constitutionality of a Statute of the State of California and the acts of the defendant, Frank G. Snook, as Chief of the Division of Motor Vehicles and the defendant Ray L. Riley, as State Controller of the State of California, in enforcing provisions of said Statute are involved in this action; the plaintiffs have prayed for an interlocutory injunction restraining the enforcement of said provisions of said State Statute and the acts of the said Defendants during the pendency of this action, and until the final hearing and determination thereof; and it further appearing that the plaintiffs have moved the Court for said interlocutory injunction based upon the records and files in this cause, the Court being fully advised in the premises, it is

Considered, ordered, adjudged and decreed that the said [fols. 20-22] defendant Frank G. Snook, as Chief of the Division of Motor Vehicles, and said defendant Ray L.

Riley, as State Controller of the State of California, show cause, if any they have, before a session of this Court, consisting of three judges thereof, one being a Circuit Judge, at 2 o'clock P. M. on the 24th day of June, 1929, at the Court Room of this Court in the Federal Building in the City of San Francisco, California, why an interlocutory injunction should not issue as prayed for in the complaint and moved for by the plaintiffs; and further, the said plaintiffs shall forthwith serve copies of the Bill of Complaint, the motion for an interlocutory injunction, the order entered herein, and a proper Notice upon the Governor of the State of California, the Attorney General of the State of California, and the said Defendant, Frank G. Snook, as Chief of the Division of Motor Vehicles, and said defendant Ray L. Riley, as State Controller of the State of California.

Enter.

A. F. St. Sure, Judge.

Dated 15th day of June, 1929.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT—Filed June 24, 1929

Now comes Frank G. Snook as Chief of the Division of Motor Vehicles, State of California, and Ray L. Riley, as State Controller of the State of California, named as defendants in the above entitled proceeding, and they move the above entitled court to dismiss the Bill of Complaint filed herein on the following grounds:

I

That said bill of complaint does not state facts sufficient to constitute a cause of action against said defendants or either of them, or to entitle the plaintiffs, or any of them, to the whole or any part of the relief prayed for in said complaint.

II

That this court has no jurisdiction of the subject of this [fol. 24] proceeding or of the above named defendants or either of them.

III

That there is a misjoinder of parties plaintiff in the above entitled action.

IV

That there is a misjoinder of parties defendant in the above entitled action.

V

That there is a misjoinder of causes of action set forth in plaintiffs' complaint, in that several causes of action are attempted to be set forth improperly in said complaint, being the cause of action against the defendant Snook for an injunction restraining him from enforcing the provisions of an act of the legislature of the State of California; an action for an accounting and a judgment for the return of moneys heretofore paid by the plaintiffs as fees to the State of California; an action for misjoinder against the State Controller from issuing any warrants against the motor vehicle fund, and an action for a writ of mandate against the State Controller commanding and directing him to issue a warrant to the plaintiffs for the amounts heretofore paid by them as license fees under the statute in question, and an action against the defendant Snook for a money judgment for such fees.

VI

That several causes of action have been attempted to be set forth in plaintiffs' complaint but they have not been separately stated.

[fol. 25]

VII

That said plaintiffs have not, nor have either or any of them, legal capacity to sue the defendants, or either of them.

Said motion is made and based upon all of the pleadings on file in this action, this motion, notice thereof and proof of service.

Dated San Francisco, California, June 24th, 1929.

U. S. Webb, Attorney General of the State of California; Robert W. Harrison, Chief Deputy Attorney General; Frank L. Guerena, Deputy Attorney General; Attorneys for said Defendants.

[fol. 26] IN UNITED STATES DISTRICT COURT

Present: the Honorable Frank H. Rudkin, Circuit Judge; A. F. St. Sure, District Judge, and Harold Louderback, District Judge.

No. 2389-S

GEO. T. COTTINGHAM and WILLIAM C. MEGGINES, Doing Business as City Transfer Company; San Jose Transfer & Storage Company, a Corporation, and Union Ice Company, a Corporation, Plaintiffs,

vs.

FRANK G. SNOOK, as Chief of the Division of Motor Vehicles, State of California, and Ray L. Riley, as State Controller of the State of California. Defendants

DECREE—Filed June 26, 1929

This cause came on to be heard Monday, June 24, 1929 and on motion for interlocutory injunction and motion to dismiss the bill and was argued by counsel and submitted; and now, being fully considered,

It is ordered, adjudged and decreed that the motion for injunction be, and it is, denied; and motion to dismiss bill granted and the cause dismissed.

June 25, 1929.

Frank H. Rudkin, Circuit Judge. A. F. St. Sure, District Judge. Harold Louderback, District Judge.

[fol. 27] [File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed July 1, 1929

The above named Plaintiffs, conceiving themselves aggrieved by the order and decree made and entered on the

26th day of June, 1929, in the above entitled action, do hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Error, which is filed herewith, and pray that this appeal may be allowed and a transcript of the records, proceedings, motions, orders, decrees and all papers in said action, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

Dated this 1st day of July, 1929.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

The foregoing appeal is allowed upon the filing of a proper bond in the amount of two hundred fifty ($250) dollars.

A. F. St. Sure.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 1, 1929

And now, on this 1st day of July, 1929, came the plaintiffs by their solicitors W. R. Crawford and J. F. Vizzard and say that the order entered in the above cause on the 26th day of June, 1929, denying the application for an interlocutory injunction against the defendants herein, is erroneous and unjust to plaintiffs:

Because the Court erred in refusing and denying the application by plaintiffs for an interlocutory injunction against Frank G. Snook, as Chief of Division of Motor Vehicles and Ray L. Riley, as State Controller of the State of California, defendants herein.

And further, and now, on this 1st day of July, 1929 came the plaintiffs by their solicitors, W. R. Crawford and J. F. Vizzard and say that the order entered in the above cause on the 26th day of June, 1929, granting the motion to dismiss the complaint in such cause and dismissing the said complaint, is erroneous and unjust to the plaintiffs:

Because the court erred in granting the said motion to dismiss the said complaint, and,

Because the Court erred in dismissing the said complaint.

[fols. 30-36] And further, and now, on this 1st day of July, 1929, came the plaintiffs by their solicitors W. R. Crawford and J. F. Vizzard and say that the decree entered in the above cause on the 26th day June, 1929, granting said motion to dismiss and dismissed the cause, is erroneous and unjust to plaintiff:

Because the court erred in dismissing the cause.

Wherefore the plaintiffs pray that the said order refusing and denying the said interlocutory injunction be reversed, and further that the said decree entered in such cause granting the motion to dismiss and dismissing the cause be reversed, and the District Court be instructed to enter proper order or decree granting said interlocutory injunction prayed for in the bill of complaint and further that the District Court be instructed to enter the decree as prayed for by said Bill of Complaint, or for such proper relief as the plaintiffs are entitled to and as the nature of the cause demands.

W. R. Crawford, J. F. Vizzard, Solicitors for Plaintiffs.

[fols. 37 & 38] Citation in usual form, showing service on U. S. Webb and Robert W. Harrison, filed July 2, 1929, omitted in printing.

[fol. 39] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF RECORD TO BE PRINTED—Filed Aug. 3, 1929

Statement

I

That the Statutory Court erred in denying the motion for the interlocutory injunction.

II

That the Statutory Court erred in granting the motion to dismiss the Bill of Complaint.

III

That the Statutory Court erred in dismissing the bill of complaint.

IV

That the Statutory Court erred in dismissing the cause of action.

V

This action is a class suit and was instituted in the Federal District Court; and said Court has jurisdiction to hear [fol. 40] and determine the matter involved in this controversy.

VI

The appellants and many thousands of persons, firms, associations and corporations have been compelled to pay said exactions under the said subdivision (c) of the said Section 77, as amended in the year of 1927, of said "California Vehicle Act," in order to use not only the Federal Aid Highways, but also the streets within the limits of said cities, and now they are compelled to pay to said Appellee Snook said exactions before they can use said highways and streets, as aforesaid, by their additional motor vehicles. The said Appellants and said others are entitled to the protection of the 14th Amendment of the Federal Constitution, and the Constitution of the State of California or their businesses will be irreparably damaged.

VII

Under the provisions of the State Constitution, as well as Legislative Acts, the cities are empowered to charge license and other fees of all motor vehicles operating in said cities transporting persons for hire or transporting property before said motor vehicles can use said streets. All the cities in said State had many years prior to the first Motor Vehicle Act of 1913 enacted ordinances for the cost of regulation and as compensation for the wear and tear of said streets by motor vehicles transporting persons for hire and also transporting property. Said cities are now collecting from said Appellants and all said others many millions of dollars annually, 25% of said money is

used for regulation and the balance, 75%, is expended in the maintenance and repair of their said streets. The said exactions are "tolls," and in addition to said exactions the [fol. 41] Appellants and all said others, as taxpayers, pay taxes and assessments to construct the said streets, and to maintain and repair the same.

VIII

Under the provisions of the "California Vehicle Act" said subdivision (c) of Section 77, as amended in the year 1927, was not enacted under police power, but as a revenue measure in order to compel the Appellants and certain of said others to pay said exactions in advance before they could use not only the Federal Aided Highways, but also the streets within the limits of said cities. All the money so collected has been and now is being expended exclusively for the construction, maintenance and repair of the Federal Aided Highways, although 75% of said money so collected was charged for the use of said streets. Said exactions under said subdivisions (c), as aforesaid, are "tolls."

IX

It is admitted that thousands of motor vehicles transporting persons for hire or transporting property using both the Federal Aided Highways and said streets of said cities are not required to pay said exactions under said subdivision (c), as aforesaid, as their motor vehicles do weigh, unladen, less than 3000 pounds, even though the weight of vehicle and load would exceed 6000 pounds; and said Appellants and all persons, firms, associations and corporations similarly interested and situated have been and will be in direct competition in their businesses with the owners and operators so vested with said privileges, as aforesaid, and said Appellants and said others have been irreparably damaged by such competition, and they will suffer said irreparable damage daily in their businesses. Said subdivision (c), of said Section 77, as amended, as aforesaid, is unconstitutional, being contrary to and in [fol. 42] violation of the due process of law and equal protection clauses of the 14th Amendment of the Federal Constitution, as well as the State Constitution.

X

It is admitted that the said cities have compelled owners and operators to pay in advance said exactions for the use of said streets before their motor vehicles can transport persons for hire or property. 75% of the money so collected is expended in the maintenance and repair of said streets. It is admitted that the appellants and said others similarly interested or situated have been and will be compelled to pay in advance said exactions under said subdivision (c), as aforesaid, before they can use not only the Federal Aid Highways, being all public highways outside of the limits of cities, but also the said streets in said cities before they can use their motor vehicles for the transportation of persons for hire or for the transportation of property; and 75% of the money so collected by said Appellee Snook is derived from said exactions for the use of said streets of said cities, as aforesaid; and every dollar so collected, as aforesaid, is expended on the construction of Federal Aided Highways and their maintenance and repair; and said Appellants and said others have never received any benefits from said exactions, as aforesaid. The said exactions, payable in advance, cannot be divided. Said subdivision (c), as aforesaid, is unconstitutional, as said exactions are arbitrary and unreasonable and impose double taxation being contrary to and in violation of the said 14th Amendment, especially the due process of law and the equal protection clauses thereof, as well as the Constitution of the State of California.

XI

[fol. 43] The State entered into a contract with the Federal Government by the terms of which said State agreed to abide by all the provisions of the Federal Highway Legislation. Said Appellants and said others are taxpayers, owners and operators of motor vehicles and have paid for years their taxes and licenses to the Federal Government, and are entitled to receive all the privileges and benefits of said contract.

XII

The said Federal Aid Legislation, so adopted by the State, provides "That all highways constructed or recon-

structed under the provisions of this Act shall be free from tolls of all kinds." Said subdivision (c) of said Section 77, as amended, of the "California Motor Vehicle Act," is unconstitutional, being contrary to and in violation of said contract entered into by said State, and the provisions of said Federal Aid Legislation, because said exactions, as aforesaid, are "tolls," and all highways in the State outside the limits of Cities are protected against the charge of "tolls," and further said exactions, as aforesaid, are collected in advance and cannot be divided.

XIII

The said Acts and threatened Acts of said Appellee Snook in enforcing the provisions of said subdivision (a), as aforesaid, are unconstitutional and void, as said subdivision (c), as aforesaid, is unconstitutional.

XIV

The Acts and threatened Acts of said Appellee Riley, in enforcing the provisions of said "California Vehicle Act" by distributing the money so collected by said Appellee Snook, have been and will be unconstitutional and void, as said subdivision (c), as aforesaid, is unconstitutional; and said Appellants and said others have been and will in the future be irreparably damaged and their businesses dam- [fol. 44] aged without any recourse.

XV

The Appellants contend that they and all persons, firms, associations and corporations similarly interested or situated are entitled to all of the relief prayed for in the bill of complaint against said Appellees Snook and Riley, and for all other and proper relief as this Honorable Court may deem proper and fit in the premises.

Parts of Record to be Printed

1. Bill of Complaint.

2. Motion for interlocutory injunction.

3. Order setting down for hearing said motion.

4. The motion to dismiss the bill of complaint.

5. The order or decree denying the motion for interlocutory injunction, granting the motion to dismiss and dismissing the cause of action.

6. Assignments of Error.

7. Petition for Appeal and order allowing same.

8. Citation.

9. Names of solicitors and addresses: W. R. Crawford, 310 Call Building, San Francisco; J. F. Vizzard, 310 Call Building, San Francisco; Henry G. Hotchkiss, 20 Pine Street, New York City.

[fol. 45] W. S. Crawford, J. F. Vizzard, Henry G. Hotchkiss, Solicitors for Appellants.

Due service and receipt of a copy of the above points relied upon and designation of parts of Record to be printed is hereby admitted this 29th day of July, 1929.

U. S. Webb, Attorney General; R. W. Harrison, Deputy Attorney General, Solicitors for Appellees.

[fol. 46] [File endorsement omitted.]

Endorsed on cover: File No. 34,398. N. California D. C. U. S. Term No. 267. Geo. T. Cottingham and William C. Meginnes, doing business as City Transfer Company, et al., appellants, vs. Frank G. Snook, as Chief of Division of Motor Vehicles of the State of California, and Ray L. Riley, as State Controller of the State of California. Filed July 29, 1929. File No. 34,398.